IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16637 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMMED HANIF HUSSEIN MIYA SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16637 of 2003

MR NISHITH P THAKKAR for Petitioner No. 1

MS Mita S Panchal AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 17/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order dated 26/09/03, passed by respondent no.2 for detaining the petitioner u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985, on the ground that the petitioner was involved in an offence punishable u/s.66(B), 65(A), 65(E) read with s.81 of the Bombay Prohibition Act, 1949 registered before Vejalpur Police Station at C.R.No.5109/2003 on 22/09/03.

2. The learned advocate for the petitioner has contended that the order of detention is illegal, as only one prohibition case has been registered against the petitioner and even according to the F.I.R., the petitioner was not present when foreign liquor was seized from other co-accused persons, who were also detenus under respective detention orders. He has also contended that the records do not show that there was any threat to public order. Therefore, the order of detention could not have been passed and it deserves to be quashed and set aside.

3. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP appeared on behalf of the respondents. The learned AGP produces affidavit, which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

4. During the course of arguments, the learned advocate for the petitioner has drawn my attention to the fact that the petitioner was detained along with two other detenus who were co-accused in the aforesaid criminal offence. It is also contended that one of them was released by this Court (Coram : Hon'ble Mr. Justice A. L. Dave) by order dated 04/12/03 passed in S.C.A.No.14925 / 2003. A copy of the above order has been supplied by the learned advocate for the petitioner.

5. Therefore, when the co-accused and the petitioner, both are sailing in the same boat, then in that event, there is no reason to take a view different from the view adopted by this Court in the aforesaid petition. In other words, on the principle of parity, the petitioner deserves to be released. Accordingly, this petition deserves to be allowed and the detention order is required to be quashed and set aside.

6. For the foregoing reason, this petition is allowed. The impugned order of detention dated 26/09/03

passed against the detenu, is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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